IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1853 OF 1997

Shripati Gangaram Gaikwad,
since deceased, by his heirs:
1. Shri Bajirao Shripati Gaikwad
2. Shri Chandrakant Shripati Gaikwad
3. Shri Vijay Shripati Gaikwad
4. Shri Mahendra Shripati Gaikwad
5. Shri Subhash Shripati Gaikwad
All residents of Saigaon,
Taluka Khed, District Pune. : Petitioners

V/s.

1. Shri Sadashiv Bhaguji Gaikwad
residing at Saigaon, Taluka Khed,
District Pune.
2. Shri Umaji Gangaram Gaikwad
since deceased, by his heirs:
1) Smt.Housabai Umaji Gaikwad
2) Shri Uddhav Umaji Gaikwad
3) Shri Madhav Umaji Gaikwad
4) Shri Sahadeo Umaji Gaikwad
All residents of Tilaknagar
Police Station, Rahul Nagar,
Samrat Ashok Mandal, Chembur,
Mumbai--82.

3. Sou. Jaywantabai Nana Dhone

4. Sou. Ashabai Kashinath Tapake

5. Smt.Gajabai Sitaram Gaikwad

6. Shri Prabhakar Hiraman Gaikwad

All residents of Gautam Nagar

Dumping Road, Farida Mistri Chawl,

Mulund (West), Mumbai-80. : Respondents

...

Mr.A.H.Palekar for the petitioners.

Mr.P.M.Gore for respondent no.1.

...

CORAM : S.A. BOBDE, J.

DATE : MAY 4, 2006.

ORAL JUDGEMENT

1. The petitioners have challenged the order of the Addl. Collector, Pune, dated 19th September 1996, confirming concurrent findings and orders passed by the S.D.O., Junnar Sub-Division, Khed (Pune), dated 31.1.1989 and Tahsildar, Khed, dated 17.8.1984.

2. The matter arises this way:

The land in question was transferred by the original watandar, viz., Bhagaji Sakharam Gaikwad in the year 1921 to one Kushaba Gaikwad, admittedly without prior permission of the Government. Bhagaji's son Sadashiv questioned the alienation in favour of Kushaba.

Sadashiv succeeded. By an order dated 5.3.1976, the Addl. Commissioner, Pune Division, Pune, held in an appeal under section 3(2) of the Bombay Inferior Village Watans Abolition Act, 1958, hereinafter referred to as the "Act", that the sale dated 4.2.1921 in favour of Kushaba was void for want of permission under section 7 of the Act. This order has admittedly achieved finality and has not been challenged by Kushaba's son or anybody else. While declaring the sale to be void, the learned Addl. Commissioner set aside the re-grant order in favour of Kushaba's son Sitaram who appears to be in possession of the land. The Addl. Commissioner also ordered action under section 9 of the Act.

3. As a result of the Commissioner's order, notices were issued to Kushaba's son Sitaram and the present petitioners in order to make an inquiry under section 9 of the Act. The Tahsildar came to the conclusion that the respondents had not made any substantial improvement in the land and, therefore, their eviction would not cause any undue hardship to them. The Tahsildar came to this conclusion after carrying out a spot inspection. Against the order of the Tahsildar, Shripati, the present petitioner, preferred an appeal before the Asstt. Collector, Junnar. This petitioner is said to be the nephew of the original transferee Kushaba. The Asstt. Collector came to the conclusion that there was no

evidence that Shripati was in possession of the land since the last 65 years. It appears that the petitioner also accepted before the S.D.O. that there was no substantial improvement of the land. Thus, the order of the Tahsildar was upheld.

4. This order was challenged before the Addl. Collector, Pune, who dismissed the appeal. This petition questions the aforesaid orders.

5. Mr.Palekar, the learned counsel for the petitioners, strongly urged that the impugned orders, particularly that of the Addl. Collector, Pune, dated 19.9.1996 are in excess of the jurisdiction in that they result in regrant of the lands to the respondent Sadashiv. According to the learned counsel, there is no power in the authorities to regrant the land to the original owner.

6. Having considered the submission of the learned counsel, it appears that the contention cannot be upheld. No expressed or implied bar imposed by any law has been pointed out to show that after an unauthorised sale of watan land is held void, such land cannot be regranted to the original watandar. It appears that section 5 of the Act indicates to the contrary, in that it contemplates regrant of land to the watandar.

7. It was next urged by Mr.Palekar, learned counsel for the petitioners, that the authorities below committed an error in coming to the conclusion that there was no substantial improvement of the land in question. According to the learned counsel, what is necessary for the authorities to consider is whether there has been improvement and development and no substantial improvement or development. Having considered the purpose of section 9, it appears that the State Government is required to form an opinion to allow retention of the land to an unauthorised holder if it finds that in view of the investment made by him, his eviction will cause undue hardship to him. In the present case, the authorities have come to the conclusion that other than routine maintenance, the petitioners have not made any investment which could result in undue hardship to them, in case they are evicted. Merely because the authorities have held that there is no substantial investment or development, it would not vitiate the order. In any case, concurrent findings of fact in this regard have been reached by all authorities below.

8. In this view of the matter, it appears that the impugned orders do not suffer from any error of law apparent on its face. Hence, the rule stands discharged.

There will be no order as to costs.

S.A. BOBDE, J.